

These terms and conditions ("Agreement") of this Black Box Corporation, on behalf of its direct and indirect subsidiaries and affiliates (collectively "Black Box") purchase order ("PO") constitute a binding agreement between you (hereinafter referred to as "Vendor") and Black Box. This PO expressly limits acceptance to the terms of this PO and Black Box hereby objects to any different or additional terms contained in any response to this PO. Vendor accepts this Agreement by either issuing an acknowledgment purchase order or shipping the products identified in this PO, unless Vendor and Black Box have entered into a separate written agreement, in which case such separate written agreement will govern. NOW, THEREFORE, intending to be legally bound hereby, Vendor and Black Box hereby agree as follows:

1. If Black Box is submitting this PO for purchasing the Vendor products listed in this PO (the "Vendor Products") for resale, Black Box shall determine, in its sole discretion, the price charged for the Vendor Products, to its customers ("Black Box Customer").
2. The price for each Vendor Product is set forth in this PO ("Purchase Price"). Except for taxes based on Vendor's net income, Black Box will pay or reimburse Vendor for all taxes imposed on Black Box or Vendor, unless Black Box presents Vendor with a valid exemption certificate. Such charges shall be shown as a separate line item on invoices. The Purchase Price for Vendor Products is exclusive of any taxes. Payment of the Purchase Price for each Vendor Product (including any freight, taxes or other applicable costs initially paid by Vendor but required to be borne by Black Box hereunder) shall be made by Black Box to Vendor in United States dollars, net sixty (60) days from the later of (i) Black Box's receipt of Vendor's accurate invoice, or (ii) Black Box's receipt of shipment of the Vendor Products at the shipment address specified by Black Box ("Due Date"). Black Box shall have the right to set-off any amount due and owing by Vendor to Black Box against any amount due and owing by Black Box to Vendor under this Agreement. If Black Box reasonably disputes an invoice, Black Box shall pay the undisputed amount by the Due Date and submit written notice of the disputed amount (detailing the nature of the dispute, the invoice(s) disputed). If a dispute is resolved against Black Box, Black Box will pay the disputed amounts within thirty (30) days of the resolution of the dispute.
3. Black Box reserves the right to cancel, change or reschedule all or any part of this PO, including, without limitation, changing the method of delivery and shipping destination, by providing Vendor with written notice thereof. Vendor shall use its best efforts to mitigate any costs incurred by Vendor as a result of such cancellation, change or rescheduling. If any such cancellation, change or rescheduling of this PO (not resulting from Vendor's failure to perform its obligations hereunder) causes an increase or decrease in Vendor's cost of performing its obligations under this Agreement, an equitable adjustment shall be made in the Purchase Price and/or the delivery schedule. Any claim by Vendor for such an adjustment shall be waived unless asserted by Vendor in writing within ten (10) days following Vendor's receipt of written notice of the cancellation, change or rescheduling.
4. All Vendor Products shall be marked for shipment to Black Box's address set forth in this PO, and delivered to a Black Box designated carrier, F.O.B. destination. Risk of loss and title to the Vendor Products shall pass to Black Box upon receipt at the ship-to address specified by Black Box. Black Box reserves the right to select the carrier and method of shipment. All freight and other shipping expenses, as well as any special packing expenses pre-approved by Black Box in writing, shall be paid by Black Box.
5. Upon delivery of any Vendor Products, Black Box may, in its sole discretion, perform acceptance testing on the Vendor Products. In the event such acceptance testing reveals a defect in the Vendor Products, Black Box shall notify Vendor in writing that it has rejected such Vendor Products, and Black Box shall have no obligation to make any payment, including, without limitation, any payment of shipping costs, for such rejected Vendor Products. Black Box shall return such rejected Vendor Products to Vendor, at Vendor's expense, for immediate repair or replacement by Vendor.
6. Vendor warrants that (i) Vendor has all intellectual property rights necessary to sell and license the Vendor Products to Black Box in accordance with the terms of this Agreement; (ii) the Vendor Products shipped under this PO will be free from any liens, encumbrances or defects in title; (iii) Vendor Products sold to Black Box under this PO are new and will be manufactured from new parts unless specifically identified as used or refurbished products; (iv) the Vendor Products will be free from defects in material and workmanship for a period of twelve (12) months from the date of acceptance by Black Box; and (v) if Vendor is not the manufacturer of the Vendor Product, Vendor shall pass through to Black Box any manufacturer warranties.
7. The foregoing warranties apply solely to Black Box and to Black Box Customers. Vendor shall have no obligation to repair or replace the Vendor Product if the Defect in the Vendor Product is caused by modification of the Vendor Product not made or approved by Vendor or by use of the Vendor Products other than in accordance with the user manuals, training materials, descriptions, specifications, schematics, technical manuals, supporting materials and other information in printed or electronic form relating to the Vendor Products ("Documentation").
8. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, VENDOR DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES ON PRODUCTS FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. AT ANY TIME DURING THE WARRANTY PERIOD DESCRIBED IN SECTION 6 ABOVE, BLACK BOX MAY RETURN TO VENDOR, FOR REPAIR OR REPLACEMENT, ANY VENDOR PRODUCTS THAT DO NOT MEET THE REQUIREMENTS SET FORTH IN SECTION 6 OR OTHERWISE FAIL TO MATERIALLY CONFORM TO THE SPECIFICATIONS OR TERMS AND CONDITIONS OF THIS AGREEMENT. VENDOR SHALL REPAIR OR REPLACE THE NON-CONFORMING VENDOR PRODUCTS AND RETURN THE SAME TO BLACK BOX, AT VENDOR'S EXPENSE, AS SOON AS POSSIBLE, BUT IN NO EVENT LATER THAN FIVE (5) BUSINESS DAYS AFTER VENDOR'S RECEIPT OF THE NON-CONFORMING VENDOR PRODUCTS. IF VENDOR DOES NOT REPAIR OR REPLACE THE NON-CONFORMING VENDOR PRODUCTS WITHIN SUCH TIME PERIOD, BLACK BOX MAY OBTAIN A FULL REFUND OF THE AMOUNTS PAID BY BLACK BOX TO VENDOR FOR THE NON-CONFORMING VENDOR PRODUCTS, INCLUDING, WITHOUT LIMITATION, FREIGHT COSTS FOR RETURN OF THE NON-CONFORMING VENDOR PRODUCTS TO VENDOR. REPAIRED OR REPLACED VENDOR PRODUCTS SHALL HAVE A TWELVE (12) MONTH WARRANTY OR SUCH GREATER PERIOD OF TIME AS MAY REMAIN IN THE WARRANTY PERIOD AS SET FORTH IN SECTION 6. VENDOR SHALL REIMBURSE BLACK BOX FOR ANY COSTS OR EXPENSES (INCLUDING RETURN FREIGHT COSTS) INCURRED BY BLACK BOX ASSOCIATED WITH THE REPAIR OR REPLACEMENT OF THE NON-CONFORMING VENDOR PRODUCTS. IF REQUESTED BY BLACK BOX, VENDOR WILL, AT VENDOR'S EXPENSE, PROVIDE INTERIM PRODUCTS FOR USE WHILE THE NON-CONFORMING VENDOR PRODUCTS ARE OUT FOR WARRANTY REPAIR (IF REQUESTED BY BLACK BOX, SUCH INTERIM PRODUCTS WILL BE PROVIDED PRIOR TO BLACK BOX'S RETURN OF THE NON-CONFORMING VENDOR PRODUCTS FOR WARRANTY SERVICE).
10. Vendor hereby grants to Black Box a non-exclusive right to sublicense any intellectual property rights in the Vendor Products, either directly or indirectly through resellers and distributors, to Black Box Customers solely for use in the Vendor Products purchased by such Black Box Customers. Any sublicenses granted by Black Box pursuant to this Section shall be perpetual.
11. Vendor hereby grants to Black Box a royalty-free, non-exclusive, worldwide and perpetual right and license to use, reproduce, distribute and prepare derivative works of all Documentation. Black Box agrees to retain all proprietary marks, legends and patent and copyright notices that appear on the Documentation and all whole or partial copies thereof.

12. Black Box shall retain any and all right, title and interest, including, without limitation, all intellectual property rights, in and to any Black Box supplied materials.

13. Except as otherwise expressly set forth herein, Vendor shall retain all intellectual property rights in and to the Vendor Products, and no right or license is granted by this Agreement to Black Box to use, copy, sublicense or otherwise transfer any intellectual property rights in the Vendor Products or to make any modifications to, or derivative works from, such intellectual property rights.

14. Vendor shall defend, at its expense, any action brought against Black Box to the extent that it is based on a claim that the purchase, use, sale, distribution or support of the Vendor Products by Black Box (i) infringes any third party intellectual property right, or (ii) directly or indirectly causes damage to real or personal property, death and/or personal injury as a result of a defect in the design or manufacture of the Vendor Product; and Vendor shall indemnify Black Box from any costs, damages, settlement and fees finally awarded against Black Box in such action which are attributable to such claim. Black Box agrees to notify Vendor promptly in writing of any claim, to permit Vendor to defend, compromise or settle the claim, and to provide all available information and reasonable assistance regarding such claim. Vendor shall not be liable for any settlement, costs or fees incurred by Black Box on such action or claim unless authorized in writing by Vendor. Should any Vendor Product become, or in Vendor's reasonable opinion be likely to become, the subject of a claim for infringement of a third party intellectual property right, Vendor shall, in addition to the foregoing defense and indemnity, (i) procure for Black Box and/or the Black Box Customers, at no cost to Black Box or the Black Box Customers, the right to continue to use the infringing Vendor Products, (ii) replace or modify the infringing Vendor Products, at no cost to Black Box or the Black Box Customers, to make such infringing Vendor Products non-infringing, provided that the replacement or modified Vendor Products provide equivalent or better functionality and performance; or (iii) if neither (i) or (ii) are reasonably commercially practicable, terminate the right to use such infringing Vendor Products, remove the infringing Vendor Products at Vendor's expense, and grant Black Box credit of all payments made to Vendor with respect to such infringing Vendor Products.

15. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BLACK BOX'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF THIS PO SHALL NOT EXCEED THE TOTAL CHARGES UNDER THIS PO.

16. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without reference to its conflicts of law principles.

17. "Confidential Information" shall mean confidential or other proprietary information that is disclosed by either party to the other party under this Agreement, including, without limitation, business and product plans, service plans, pricing information, customer lists, and other confidential business information, whether in a written or non-written format. Confidential Information shall not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is intentionally disclosed by the disclosing party to a third party without restriction on disclosure; (iv) is rightfully received by the receiving party from a third party without a duty of confidentiality; or (v) is disclosed pursuant to any judicial or governmental order, provided that the receiving party gives the disclosing party sufficient prior notice to contest such order. Each party agrees (i) to observe complete confidentiality with respect to, and not to disclose or permit any third party or entity access to, the Confidential Information (or any portion thereof) of the other party without the prior written permission of such party (except such disclosure or access which is required to perform any obligations under this Agreement); (ii) not to utilize, except as specifically provided in this Agreement, the Confidential Information (or any portion thereof) of the other party; and (iii) to insure that any employees who receive access to the Confidential Information are advised of the confidential and proprietary nature thereof and are prohibited from copying, utilizing or otherwise revealing the Confidential Information, except as required to perform any obligations under this Agreement. Without limiting the foregoing, each party agrees to employ with regard to the Confidential Information procedures no less restrictive than the strictest procedures used by it to protect its own confidential and proprietary information and in no event less than reasonable procedures.